

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 3680 of 2007
To
FIRST APPEAL No. 3683 of 2007**

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**
- 2 To be referred to the Reporter or not ? **-No.**
- 3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**
- 5 Whether it is to be circulated to the civil judge ? **-No.**

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**SPECIAL LAND ACQUISITION OFFICER & 1 - Appellant(s)
Versus
CHUNIBHAI BAJIBHAI PATEL - Defendant(s)**

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Appearance :

MR SUNIT SHAH, GP for Appellant(s) : 1 - 2 IN FA NOS.3680 TO 3681 OF 2007.

MS REETA CHANDARANA, AGP for Appellant(s) : 1 - 2 IN FA NOS.3682 TO 3683 OF 2007.

MR KM SHETH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/09/2007

ORAL JUDGMENT

1. Special Land Acquisition Officer, Narmada Project Unit-12, Bharuch and Executive Engineer, Narmada Yojna Naher Division No.2/3, Karjan, Dist. Baroda, appellants herein original opponents have filed these appeals under Section 54 of the Land Acquisition Act, 1894 ('the Act' for short) against the judgment and award dated 27/1/2005 passed by the learned Civil Judge (SD), Bharuch in Land Acquisition Reference Case No.748 of 1998 to 751 of 1998, main case No.751 of 1998. By the impugned judgment, learned Judge was pleased to partly allow the reference applications with proportionate costs. The learned Judge has held that the applicants are entitled to receive market price on their acquired land at the rate of Rs.32.50 per sq. mtr. as additional amount of compensation in Compensation Case No.112 of 1995, over and above compensation of Rs.4.09 per sq. mtr. for irrigated land and Rs.2.73 per sq. mtr. for non-irrigated land which means that in all, the learned Judge has awarded Rs.40.59 per sq. mtr. and Rs.39.23 per sq. mtr. respectively. The learned Judge has also awarded the other consequential benefits as per the provisions of the Act.

2. The State Government has sent a proposal to acquire the lands of village Sarbhan, Taluka Amod, District Bharuch, for the purpose of construction of Sarbhan Prashakha-1 Canal of Narmada Yojna which is for the public purpose. On perusal of the said proposal, the State Government was satisfied that the lands of village Sarbhan, Taluka Amod, District Bharuch were likely to be needed for the said purpose. In view of the same, the State Government issued a Notification under Section 4(1) of the Act, which provides publication of preliminary notification and powers of officers thereon. The said notification was published in Official Gazette on 22/3/1996. After the said notification, the notice was served on the owners of the lands. The said owners have filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer submitted his report under Section 5(A) of the Act, which provides hearing of objections, to the State Government. Considering the said report, the State Government was satisfied with the lands of village Sarbhan were needed for the purpose of construction of Sarbhan Prashakha-1 Canal of Narmada Yojna.

Thereafter, the State Government decided to issue notification under Section 6 of the Act which provides declaration that the land is required for a public purpose. The said notification was published in the Official Gazette on 1/10/1996. After issuance of the said notification, notices were sent to the interested persons in this behalf.

3. After considering the material placed before him, the Special Land Acquisition Officer passed an award dated 29/11/1997 under Section 11 of the Act which provides inquiry and award by collector. The Special Land Acquisition Officer awarded compensation at the rate of Rs.4.09 per sq. mtr. to the claimants for irrigated land and Rs.2.73 per sq. mtr. for non-irrigated land.

4. As the claimants were of the opinion that the amount of offer of the compensation passed by the Special Land Acquisition Officer was inadequate and, therefore, they have filed an application in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for determining the just amount of compensation payable to them under Section 18 of the Act, which provides

Reference to the Court. It may be noted that the said Section falls within Part III of the Act which also provides Reference to Court and procedure thereon.

5. When the matter reached before the learned Judge, i.e. Land Reference Court, the Court gave numbers as 748 to 751 of 1998. Before the Reference Court, the claimants claimed compensation at the rate of Rs.50.00 per sq. mtr.

6. Before the Reference Court, the claimants have filed documentary evidence and also placed oral evidence and also examined following witnesses.

(1) Rajendra Nagjibhai, at Exh.125, who happened to be the claimant of the land in question;

(2) Mahendra Nanubhai Nanavati, at Exh.127, who happened to be the Assistant Secretary, APMC, Bharuch;

(3) Saiyad Yakubhai, at Exh.129, who happened to be the Accountant of Shree Ganesh Khand Udyog Sahakari Mandli;

(4) Govindbhai Ranchhodbhai, at Exh.131, who happened to be the Assistant Secretary, in the Sarbhan Co-operative Agricultural Produce and Processing Marketing Society.

7.The Reference Court noted that no evidence of comparable sale or other evidence of compensation of the market value was produced by the claimants and that enhanced compensation was claimed on yield basis.

8.As the record of the documentary evidence is concerned, the claimants have produced the extract of village Form No.7/12 of land at Exh.15 to 18, extract for well produced at Exh.19 to 123, village Form No.16 at Exh.124, average price list of the crops at Exh.139 and 130 and copies of the price of the cotton which have been shown at Exh.132 and 133.

9.Before the trial Court, Rajendra Nagjibhai, who has been examined at Exh.125, deposed that he has produced the evidence on behalf of the other claimants as all claimants have been agreed that

the compensation awarded by the Special Land Acquisition Officer is meager. He has deposed before the Court that the lands were having quality of black jirayat, fertile and having facility of irrigation. Some of the claimants were growing cotton, lady-finger, sugarcane, etc. To establish the aforesaid fact, the claimants have also produced extract of village Form No.7/12. He further deposed that they were getting crops by applying modern technique in first season they were getting crops of 28 quintals of cotton which they used to sell at APMC, Bharuch and to other private traders. The claimants have also produced other price lists of APMC, Bharuch showing the same crops for the particular year.

10.They have also stated that they were receiving from the crops of cotton Rs.58,400/- per acre. After deducting 35% cultivation expenses, they were getting Rs.38,200/- net annual income. After taking crops of cotton, they were taking crops of lady-finger in second season. They used to sell 150 quintals of lady-finger to APMC, Bharuch and to other private traders. He has stated that after deducting 35%, they were getting Rs.73,400/- per

acre as a net annual income from the crops of lady-finger. He has also deposed that they were getting 80 quintals of Sugarcane and used to sell it to Reva Khand Udyog, Amod and to other private traders. He further stated that from the crops of sugarcane, they were getting gross annual income of Rs.76,800/- per acre and after deducting 35% towards cultivation, they were getting net annual income of Rs.50,000/- per acre.

11.He further deposed that the acquired lands were having irrigation facility. To show the said fact, claimants have produced village Form No.7/12 extracts at Exh.19 to 123 which indicate that there were 100 wells for irrigation. The claimants have also produced copies of the price of cotton at Sarbhan Co-operative Agricultural Produce Society and Marketing at Exh.132 to 133. He also deposed that their acquired land is three to five km. away from the place of Amod Taluka and the lands are having high potential, residential and industrial surroundings. There are industries of sugarcane; gin of cotton etc. The said land is used for both residential and industrial purposes and for ginning of cotton etc. He has also deposed that they were

having amenities of transport like motor and truck, having facility of telephone, water, academic, education, electricity, cooperative societies, railway track etc. The lands were adjacent to the State Highway. He has, therefore, deposed that they are entitled for Rs.50/- per sq. mtr. by way of compensation.

12.The claimants have also examined one Mahendrabhai Nanubhai Nanavati at Exh.127 who happened to be the Assistant Secretary in APMC, Bharuch. The said witness produced the price list of APMC to show at what price the crop is being sold in the market. The witness has also deposed that the price list has been issued after verifying the record of APMC, Bharuch. The claimants have also examined Saiyad Yakubbbhai, at Exh.129 who happened to be the Accountant in Ganesh Khand Udyog, who issued certificate pertaining to average price of Sugarcane after verifying the record of the society. The claimants have also examined Govindbhai Ranchhodbhai at Exh.131, who happened to be the Secretary of Sarbhan Cooperative Society, who has also produced the price list of the society.

13. On the other hand, the State as well as the opponent has examined one Chandrakant Shanabhai Solanji, at Exh.143, who happens to be the Special Land Acquisition Officer. They have produced the Award of the Reference Court in L.A.R. No.360 of 1992 at Exh.145. They have also produced a copy of the extract of village Form No.7/12 at Exh.141 and also produced a copy of the award of the Land Acquisition Officer in L.A.R. No.112 of 1995 at Exh.140.

14. The Reference Court noted that in this case, the claimants have claimed enhanced compensation on yield basis. On appreciation of evidence adduced namely, extract of village Form No.7/12 produced by the claimant which I have referred and the documentary evidence which has been produced by the claimants in this behalf, the Reference Court has held that each claimant was able to raise crop of cotton as well as sugarcane and lady-finger in this behalf. After going through the evidence on record, oral as well as the documentary evidence, learned Judge of the Reference Court has taken into consideration the rate at Rs.36/- per sq. mtr. as

income, to be just and proper. The learned Judge has taken into consideration the income from the crop of cotton as Rs.73/- per sq. mtr. After deducting 50% gross income towards cultivation expenses against the income of Rs.58,400/- of cotton crops, the same would come to Rs.29,400/- and if it is divided by Rs.4000/- sq. mtr., it will come to Rs.7.35 per sq. mtr. Thereafter, the learned Judge has come to the conclusion that after applying multiplier of 10 as held by the Hon'ble Apex Court, it will come to Rs.73/- per sq. mtr. and, therefore, ultimately, the Reference Court came to the conclusion that the claimants would be entitled to Rs. 36.50 per sq. mtr. as just and proper. Thus, the learned Judge of the Reference Court has partly allowed the Reference Case by awarding additional compensation at the rate of Rs.36.50 per sq. mtr. to the claimants by a common judgment and award dated 27/1/2005 which has been given rise to the above numbered appeals.

15.The learned AGP for the appellants in these group of appeals has contended that the award passed by the learned Judge is highly excessive and therefore, the judgment and award of the learned

Judge is required to be quashed and set aside and the award passed by the Land Acquisition Officer should be confirmed as the same was passed after considering several aspects.

16. On the other hand, learned advocate Mr. K. M. Sheth, appearing for the claimants contended that the award of the Special Land Acquisition Officer can hardly be regarded as a relevant piece of evidence and as witnesses examined by the acquiring body had not produced any sale deed for consideration of the Court. He further stated that the judgment and award of the learned Judge is based upon oral and documentary evidence. It is further stated that the claimants have adduced evidence in this behalf particularly the crops of cotton, sugarcane and lady-finger grown on the land acquired as well as the price fetched by the sale of the same to APMC, Bharuch, Sarbhan Cooperative Society etc. He has further stated that the claim of the claimants that they were taking the aforesaid crops should be accepted by this Court also because the witnesses have led evidence which is supported by the documentary evidence. He has also relied upon the evidence of the claimants which shows that they

were growing 28 quintal of cotton on the acquired land and the rate indicated at Exh.139 and 130 as well as Exh.132 to 133 should be accepted by this Court in view of the principles laid down by the Hon'ble Apex Court in the case of State of Gujarat and others v. Rama Rana and others, reported in 1997 (2) SCC 693 wherein the Hon'ble Apex Court has held that the Court has a duty to subject the oral evidence to great scrutiny and evaluate the evidence objectively, and dispassionately to reach a finding on compensation. Multiplier of 10 should be applied and deduction of 50% towards cultivation expenses should be made. The claimants are also entitled to statutory benefits under amendment Act, 68 of 1984.

17.This Court has heard both the learned advocates and also gone through the evidence on record and paper-book produced by learned advocate Mr.Sheth, appearing for the claimant in this behalf.

18.Learned AGP Ms.Reeta Chandarana for the appellants has relied upon the recent judgment of the Hon'ble Apex Court in the case of Land Acquisition of Officer, A.P. v. Kamadana Ramakrishna Rao and ors.

Reported in (2007) 3 SCC 526 and stated that agricultural income on yield basis, multiplier of 10 to be taken for that purpose. She has also relied upon paragraphs 15, 16 and 17 of the said judgment in this behalf where, the Hon'ble Apex Court has considered the earlier decision in this behalf.

19. In this case, the claimants claimed compensation on the yield basis and after considering the evidence adduced by the claimants, the Reference Court has awarded additional amount of compensation at the rate of Rs.36.50 per sq. mtr. after applying multiplier of 10. I have gone through the evidence of Rajendra Nagjibhai at Exh.125 and further relevant documentary evidence produced by the other witnesses in this behalf. After going through the same, it is established that the claimants are entitled to Rs. 36.50 per sq. mtr. from the crop of cotton instead of Rs.73/- per sq. mtr.

20. After going through the judgment of the Hon'ble Apex Court in the case of Rama Rana (Supra) as well as Kamadana Ramakrishna (supra) other decision stated therein and after going through the evidence

on record, this Court is of the view that each of the claimant is entitled for growing 16 quintals cotton per year per acre. The rate of cotton per quintal at the relevant time was Rs.2,100/- at Exh.130, 139, 132 and 133 which is the price list of APMC, Bharuch and other Co-operative Societies which have been produced by the claimants. From that, this Court is of the view that each of the claimants was able to realise income of Rs.33,600/- per year, 50% is deducted towards cost of cultivation, it will come to Rs.16,800/- per year per acre from the sale of cotton.

21.This Court also relied upon the judgment of the Hon'ble Apex Court in the case of Land Acquisition Officer v. P.Veerabharappa, reported in AIR 1984 SC 774 wherein the Hon'ble Apex Court has held that 50% should be deducted towards the cost of cultivation. If 50% is deducted from Rs.33,600/-, the net income which would be Rs.16,800/- per year per acre from the sale of cotton. An acre is equivalent to nearly 4000 sq. mtr. Therefore, in order to arrive at income from agriculture produce per sq. mtr. the figure of Rs.16,800/- will have to be divided by 4000 sq. mts. Which will bring the

price of the land acquired at Rs.4.20 per sq. mtr.

22.As indicated above, for the agricultural income the basis of the capitalization principle, proper multiplier is to be applied. If multiplier of 10 is applied then income derived from sale of cotton would be Rs.42/- per sq. mtr. The Reference Court, in this case, has awarded compensation payable to the claimants at the rate of Rs.36.50 per sq. mtr. a additional compensation and the Special Land Acquisition Officer has awarded Rs.4.09 and Rs.2.73 per sq. mtr. which cannot be regarded as excessive at all.

23.Thus, after going through the oral and documentary evidence, this Court is of the view that the learned Judge of the Reference Court has given just award and price per square mtr. is just and correctly arrived at after applying the principle laid down by the Hon'ble Apex Court. Thus, all these appeals filed by the Government will have to be dismissed.

24.In the result, all these appeals fail and are dismissed. There shall be no order as to costs.

The Registry is directed to draw the decree in terms of this judgment.

(K.M.Mehta, J.)

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